No. 22748

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MARY L. BRANDT and NATALIE Z. STUELL,

Appellants,

vs.

STEWART L. UDALL, Secretary of the Interior, and RAYMOND J. HANSEN,

Appellees.

Appeal From the United States District Court
Eastern District of California.

BRIEF FOR APPELLEE RAYMOND J. HANSEN.

GOODSTEIN & MOFFITT,
JOHN P. MOFFITT,
3424 Wilshire Boulevard,
Los Angeles, Calif. 90005,
Attorneys for Appellee, Raymond J. Hansen.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

Page

Opinion Below 1

Jurisdiction 2

Questions Presented 2

Statutes Involved 2

Statement 3

Summary of Argument 7

Argument 9

I.

The Secretary of the Interior Correctly Determined That Appellants' Second Oil and Gas Lease Offer Is Subordinate in Priority to an Intervening Offer to Lease 9

II.

The Secretary of the Interior Has an Unreviewable Discretion to Find the Facts and to Interpret the Applicable Statutes in Managing the Public Lands of the United States, Absent Violation of a Statutory Duty 13

A. Congress Has Plenary Authority Over the Management and Disposal of the Public Lands 13

B. The Secretary of the Interior, as a "Special Tribunal," Has Been Delegated Plenary Authority to Manage, Lease and Dispose of the Public Lands of the United States.. 15

Conclusion 21

TABLE OF AUTHORITIES CITED

Cases — Page

Alabama v. Texas, 347 U.S. 272 14

Beaver v. United States, 350 F. 2d 4, cert. den., 383 U.S. 937 13

Best v. Humboldt Mining Co., 371 U.S. 334 .....15, 19

Bishop of Nesqually v. Gibbon, 158 U.S. 155 18

Boesche v. Udall, 373 U.S. 472 19

Chapman v. Sheridan-Wyoming Co., 338 U.S. 621 .. 17

DeCambra v. Rogers, 189 U.S. 119 18

Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 13

Gaines v. Thompson, 7 Wall. 347 17

Hall v. Payne, 254 U.S. 343 18

Lee v. Johnson, 116 U.S. 48 18

Litchfield v. Register and Receiver, 9 Wall. 575 17

Marquez v. Frisbie, 101 U.S. 473 17

Miller v. Udall, 307 F. 2d 676, Cert. den. 371 U.S. 951 9

Morgan v. Udall, 306 F. 2d 799 (D. C. Cir., 1962), cert. den. 371 U.S. 941 (1963) 19, 20

Ness v. Fisher, 223 U.S. 683 17

Northern Pac. R. Co. v. Cannon, 54 Fed. 252 .....14, 15

Quinby v. Conlan, 104 U.S. 420 17

Riverside Oil Co. v. Hitchcock, 190 U.S. 316 18

Shepley v. Cowan, 91 U.S. 330 17

Standard Oil Co. of California v. United States, 107 F. 2d 402, cert. den., 309 U.S. 654 18

Sun Oil Company v. Udall, 230 F. Supp. 381 17

Page

Thor-Westcliffe Development, Inc. v. Udall, 314 F. 2d 257, cert. den., 373 U.S. 951 9

Udall v. Tallman, 380 U.S. 1 20

United States v. Chic., Mil., & St. P. Ry., 218 U.S. 233 18

United States v. Seaman, 17 How. 225 17

United States ex rel. Dunlap v. Black, 128 U.S. 40.. 18

Vance v. Burbank, 101 U.S. 514 17

Work v. Rives, 267 U.S. 175 18

Wright v. Paine, 289 F. 2d 766 9

Interior Decisions

Sidney A. Martin, C.C. Thomas, 64 I.D. 81 11

Duncan Miller, 70 I.D. 512 11

Mary Adele Monson, 71 I.D. 269 11

Constitution and Statutes

United States Constitution, Art. IV, Sec. 3, cl. 2 14

United States Code, Title 30, Sec. 226(c) 2, 9

Miscellaneous

Annual Report, Secretary of the Interior, for fiscal year ended June 30, 1959 12

Hoffman, Oil and Gas Leasing on Federal Lands (1957), p. 72 11

No. 22748

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MARY L. BRANDT and NATALIE Z. SHELL,

Appellants,

vs.

STEWART L. UDALL, Secretary of the Interior, and RAYMOND J. HANSEN,

Appellees.

Appeal From the United States District Court
Eastern District of California.

BRIEF FOR APPELLEE RAYMOND J. HANSEN.*

Opinion Below.

The District Court's first unreported memorandum opinion and order are set out at pages 70-72 of the record. The District Court's second unreported memorandum opinion and order are set out at pages 226-228 of the record.

---

*This brief, with the permission of the United States Attorney's Office and pursuant to an Order of this Court, is based upon and is very similar to the one previously filed by the appellees in Case No. 21217.

Jurisdiction.

Jurisdiction of the District Court was attempted to be invoked by the appellants under:

(a) The existence of a federal question, in that the construction and interpretation of the federal statutes and regulations and the fundamental requirements of due process are involved;

(b) Section 10 of the Administrative Procedure Act of June 11, 1946, 60 Stat. 243, 5 U.S.C. sec. 1009;

(c) The terms of 28 U.S.C. secs. 2201 and 2202, relating to declaratory judgments.

The jurisdiction of this Court rests on 28 U.S.C. sec. 1291.

Questions Presented.

1. Whether the determination of the Secretary of the Interior as to who is the first qualified applicant for an oil and gas lease is subject to judicial review, absent violation of statutory duty.

2. Whether the District Court erred in finding the Secretary's decision to be a reasonable construction and application of the Mineral Leasing Act.

Statutes Involved.

30 U.S.C. sec. 226(c) provides:

> If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title shall be entitled to a lease

of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease.

Statement.

On June 12, 1959, appellants herein filed a noncompetitive oil and gas offer in the Los Angeles Land Office of the Bureau of Land Management, Department of the Interior. In this offer to lease, the names of the offerors appeared as follows:

Mrs. Mary L. Brandt, as to an undivided three-fourths interest and

Mrs. Natalie Z. Shell, as to an undivided one-fourth interest.

On June 25, 1959, appellee Raymond J. Hansen filed an oil and gas lease offer in the same Land Office for the identical mineral interest sought by the appellants in their prior-filed offer to lease.

By decision of the Land Office dated September 12, 1961 [R. 11], it was held that a lease could not be issued to the appellants in unequal proportions. This decision provided in part that the:

* * * subject offer is hereby held for rejection. However, the offerors are allowed the right to substitute within 30 days new offer forms (forms enclosed) eliminating any reference to unequal interests, without losing their priority. Failure to do so within the time allowed will result in the final rejection and closing of the case without further notice.

> The right of appeal to the Director, Bureau of Land Management is allowed in accordance with the information in enclosed Form 4-1364 (September 1959), made a part hereof.

On September 25, 1961, appellants filed another oil and gas lease offer for the same lands. A protest to the issuance of an oil and gas lease to the appellants was filed by the intervening offeror, appellee, Raymond J. Hansen, on October 9, 1961. By decision of December 7, 1962 [R. 13, 14], the Manager of the Land Office stated:

> As we are aware of no regulatory requirement which the offerors have failed to comply with in the original offer * * * the applicants appear to be entitled to the preference right accorded first qualified applicants, pursuant to Sec. 17 of the Mineral Leasing Act, as amended.

This decision was appealed by Mr. Hansen to the Director of the Bureau of Land Management. The Director, on October 8, 1963, modified and affirmed the Land Office Manager's decision [R. 15]. The Director held that [R. 16]:

> It was error for the land office to require the offerors to submit amended lease forms. Consequently, the lease offer Los Angeles 1064406, as originally filed, is entitled to further consideration and issuance of a lease over the junior offer of Mr. Hansen * * *.

From the Director's decision, an appeal by Mr. Hansen was taken to the Secretary of the Interior. It is from this final decision [R. 17] in the administrative process to which the complaint below was directed. The

Secretary of the Interior reversed the decision of the Director of the Bureau of Land Management, holding as follows [R. 21-22]:

> * * * It must be concluded then that the filing of the new Brandt-Shell offer constituted a withdrawal of the original offer; in any event, it superseded the original offer. * * *
>
> The only way in which Mrs. Brandt and Mrs. Shell could have maintained their original offer would have been to appeal to the Director from the rejection of that offer, as they were advised and they had the right to do. They did not appeal; therefore they lost whatever rights they had in their original offer. * * *
>
> * * *It is well established that the amendment of an oil and gas offer is effective only from the time the amendment is filed or that a defective offer becomes effective only from the time when the defect is cured. * * * The new offer could therefore have priority only from the date of its filing, which was subsequent to the filing of Hansen's offer.
>
> * * * *

It is regrettable that the land office erroneously advised Mrs. Brandt and Mrs. Shell that they could file a new offer without loss of priority. However, since section 17 of the Mineral Leasing Act, as amended, 74 Stat. 782 (1960), 30 U.S.C. §226 (Supp. V, 1958), grants a preference right to a noncompetitive lease to the first qualified applicant, the land office had no authority to give the new Brandt-Shell offer filed on September 25,

1961, priority over Hansen's offer which was filed on June 25, 1959.

Appellants herein sought to overturn the Secretary's decision by filing a complaint for review, declaratory judgment and injunctive relief. The District Court, on June 7, 1966, entered findings of fact and conclusions of law [R. 73-75], concluding that it had jurisdiction under the Administrative Procedure Act, 5 U.S.C. sec. 1009; that the court was limited to a review of the administrative determination; that the court did not have the right to sit *de novo*; that the Secretary of the Interior has been delegated the right to administer the public domain of the United States; that the courts must show great deference to the interpretation given a statute by the officer or agency charged with its administration; and that "The interpretation of the facts and the statute, upon which his decision of March 5, 1965, is based by the Secretary of the Interior, is a reasonable construction and application of the facts and the statute." Judgment for the Secretary of the Interior was entered on June 7, 1966 [R. 81].

The Appellants then initiated an appeal to this Court. Said case was designated as No. 21217.

On November 15, 1967, this Court dismissed the appeal by Mrs. Brandt and Mrs. Shell "for lack of jurisdiction because of the absence of a Rule 54(b), Federal Rules of Civil Procedure, Order." [R. 202].

Appellee Hansen was then served with a copy of the Alias Summons on the Second Amended Complaint.

Any question with respect to a Rule 54(b) order then became moot because on March 26, 1968, the District Court granted Hansen's motion for a Summary Judgment [R. 226-228]. This appeal followed.

Summary of Argument.

I.

The Secretary of the Interior is charged by Congress with the responsibility of determining who is the first qualified applicant for an oil and gas lease of public lands. The Secretary has considered all the relevant factors and has correctly determined the priority of the appellants' offer to lease. This decision of the Secretary is reasonable.

The Secretary was fully aware that a mistake had been made by the Land Office in requiring the appellants to change their unequal interests in their offer to lease and that, by failing to appeal from this erroneous decision, appellants lost their priority to an oil and gas lease to an offeror who made application for the same lease prior to the submission of a second offer by the appellants.

II.

The District Court possesses only a very limited jurisdiction to review decisions of the Secretary of the Interior.

A. Absent violation of a statutory duty, the Secretary of the Interior has an unreviewable discretion to find facts and to interpret the applicable statutes in

managing the public lands of the United States. Appellants do not state what statute the Secretary allegedly violated. Furthermore, they do not state what facts give rise to this alleged violation.

B. Congress has plenary authority over the management and disposal of public lands. The Secretary has been, as a "special tribunal," delegated plenary authority to manage, lease and dispose of the public lands of the United States. In the absence of fraud or imposition, the Secretary's decision, made within the scope of his authority, is conclusive on the courts. The record is devoid of any facts giving rise to fraud or imposition on the part of the Secretary.

ARGUMENT.

I.

The Secretary of the Interior Correctly Determined That Appellants' Second Oil and Gas Lease Offer Is Subordinate in Priority to an Intervening Offer to Lease.

The Secretary of the Interior is charged with the responsibility of determining who is the first qualified applicant for an oil and gas lease. The Administration of the public lands of the United States is supervised by the Secretary of the Interior, who is charged with carrying out the will of Congress, as expressed by statute. The Congress has provided that, if it is determined by the Secretary that an oil and gas lease should be issued, "the person first making application * * * shall be entitled to a lease of such lands without competitive bidding." 30 U.S.C. sec. 226(c).[1]

Here the Secretary, in his well-reasoned decision [R. 17-23], has determined that appellee Raymond J. Hansen filed the first *qualified* application to lease. Mr. Hansen has been issued a 10-year oil and gas lease pursuant to his application. Appellants seek the cancellation of this lease [R. 9] and the issuance of a lease to them. The Secretary was fully aware that the Land Office had erroneously determined that the appellants' offer to lease was defective and that the appellants had been erroneously advised that, unless a new offer

---

[1]The question of determining priorities in filing times has been productive of much litigation. Applications in various factual situations have resulted in many fine distinctions on this subject. A few examples which are illustrative are *Wright v. Paine*, 289 F. 2d 766 (C.A. D.C. 1961); *Miller v. Udall*, 307 F. 2d 676 (C.A. D.C. 1962), cert. den., 371 U.S. 951; *Thor-Westcliffe Development, Inc. v. Udall*, 314 F. 2d 257 (C.A. D.C. 1963), cert. den., 373 U.S. 951.

was filed eliminating the 75-25 percent interest reference, they would lose their priority in filing.

The appellants were given, by the Land Office decision, two alternatives: (1) to appeal to the Director, maintaining that their offer to lease was valid and the Manager's decision was erroneous, or (2) to file a new offer to lease eliminating the unequal interest reference. Appellants chose the latter course, but Hansen's offer had intervened. Appellants argued to the Secretary that their original offer was never finally rejected, since they filed a new offer within the time allowed by the Land Office decision. The Secretary interpreted the Land Office decision as follows:

> "In other words, the decision is to be read as saying that the old offer is defective and will be rejected unless a new substitute offer is filed; in that event, the old offer is supplanted and ceases to exist, consequently no final rejection of it is necessary" [R. 21].

The Secretary also found that the appellants could not have intended that there have been two offers pending at the same time since only one serial number, one filing fee and rental for one lease was ever paid. These were paid with the first offer and applied to the second offer. This, the Secretary found, demonstrated, without much doubt, that appellants intended their second offer to replace the original offer. In fact, appellants transmitted the second offer by letter dated September 26, 1961, stating "enclosed is *substitute* oil and gas lease offer" [R. 21]. This, the Secretary concluded, constituted a withdrawal of the original offer to lease or, in any event, it superseded the original offer. The failure of

appellants to appeal from the Land Office decision, which admittedly was wrong, lost appellants any priority in time which they may have had in their original offer.

The appellants' second or substitute offer to lease had priority, therefore, only from the date it was filed and was subject to any intervening offers which had been filed. In this case, an offer to lease had been filed on June 25, 1959, by Mr. Hansen, and was given priority over the appellants' substitute offer of September 25, 1961. It has been a consistent practice of the Department of the Interior that an amendment of an oil and gas lease offer is effective only from the time the amendment is filed or a defect in the offer is cured. *Mary Adele Monson,* 71 I.D. 269 (1964); *Duncan Miller,* 70 I.D. 512 (1963); *Sidney A. Martin, C.C. Thomas,* 64 I.D. 81, 85 (1957); HOFFMAN, OIL AND GAS LEASING ON FEDERAL LANDS 72 (1957). The appellants' new offer could therefore only have priority from the date of its filing. This would necessarily be so, even though the first offer was erroneously held for rejection. In the administration of this large volume of business, mistakes sometimes will happen. To be fair to all applicants, it is necessary that a consistent rule in determining priorities of filing time be applied. That has been done by the Secretary in this case. Where a decision of the Land Office is erroneous, one must appeal from it or be bound by its consequences. To rule otherwise would result in a breakdown in administrative finality.

In this connection, the magnitude of this real estate leasing program is important. As of June 30, 1959, the year that appellants' oil and gas lease offer was filed, there had been issued 131,974 oil and gas leases,

covering 107,155,290 acres. During fiscal year 1959, 55,956 new offers for oil and gas leases were received by the various Land Offices of the Department of the Interior (Annual Report, Secretary of the Interior, for fiscal year ended June 30, 1959, pp. 288-289). These figures reflect only oil and gas leasing activity, which is but a part of the volume of business handled in the Land Offices. In any business this size, there necessarily must be firm rules and consistent application of them or chaos inevitably would follow. There are also bound to be some mistakes made in the processing of offers to lease. In this case, a mistake was made in the Land Office, but due to the fact that intervening rights were involved, it was impossible to correct the mistake without affecting these other rights. If there had been no intervening offer to lease filed, there would be no problem presented. The problem here is that appellants failed to preserve their rights to a lease by appealing from the erroneous Land Office decision, and Mr. Hansen, who made no mistake, has obtained the sought-for oil and gas lease. It is essential that, in matters such as this, there be a consistent nationwide standard applied in determining the priority of offers to lease.

In this case, the Secretary was not bound by the erroneous statements of a Land Office official. On the contrary, he was bound to apply the Mineral Leasing Act and other public land statutes consistently throughout this country as he interprets them. The fact that misinformation was given the appellants is regrettable, but it cannot be the basis for changing the consistent practice followed by the Secretary in awarding an oil and gas lease. This is simply another case

similar to *Federal Crop Ins. Corp. v. Merrill,* 332 U.S. 380 (1947), where the Court held (p. 384):

> Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of this authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority.

This is, of course, another form of the basic rule that the Government cannot be estopped by the acts or nonactions of its agent. *Beaver v. United States,* 350 F. 2d 4 (C.A. 9, 1965), cert. den., 383 U.S. 937. To permit errors of local land offices to control the operation of the federal leasing program would be to produce unequal application of those laws and would make uniform application impossible.

II.

The Secretary of the Interior Has an Unreviewable Discretion to Find the Facts and to Interpret the Applicable Statutes in Managing the Public Lands of the United States, Absent Violation of a Statutory Duty.

A. *Congress has plenary authority over the management and disposal of the public lands.* The authority to dispose of public property by lease, or otherwise, rests exclusively with Congress. U.S. Constitution, Art.

IV, sec. 3, cl. 2. The Supreme Court, in *Alabama v. Texas,* 347 U.S. 272, 273-274 (1954), said:

> The power of Congress to dispose of any kind of property belonging to the United States "is vested in Congress without limitation." *United States v. Midwest Oil Company,* 236 U.S. 459, 474: "For it must be borne in mind that Congress not only has a legislative power over the public domain, but it also exercises the powers of the proprietor therein. Congress 'may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold them from sale.' *Camfield vs. United States,* 167 U.S. 524; *Light vs. United States,* 220 U.S. 536." *United States v. San Francisco,* 310 U.S. 16, 29-30: "Article 4, §3, Cl. 2 of the Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.'" *United States v. California,* 332 U.S. 19, 27: "We have said that the constitutional power of Congress [under Article IV, §3, Cl. 2] is without limitation. *United States vs. San Francisco,* 310 U.S. 16, 29-30."

The importance of this lies in the fact that, as this Court has held, persons desiring to secure lands under the public land laws have only such rights as those laws accord them. Thus, in *Northern Pac. R. Co. v. Cannon,*

54 Fed. 252 (C.A. 9, 1893), the railroad, under its land grant, was held to be "charged with knowledge of" the mining law provisions whereby a locator might foreclose rights of others without giving personal notice, when the land laws provided for publication, posting, and filing in the local Land Office.[2] So, also, claimants to public land are charged with knowledge of the historical function of the Secretary in determining all relevant problems as to entitlement under the land laws.

B. *The Secretary of the Interior, as a "special tribunal," has been delegated plenary authority to manage, lease and dispose of the public lands of the United States.* The Supreme Court, in *Best v. Humboldt Mining Co.*, 371 U.S. 334, 336-338 (1963), said:

> * * *the Department has been granted plenary authority over the administration of public lands, including mineral lands; and it has been given broad authority to issue regulations concerning them. *Cameron vs. United States, supra* [252 U.S. 450 (1920)]—an opinion written by Mr. Justice Van Devanter, who, as Assistant Attorney General for the Interior Department from 1897 to 1903, did more than any other person to give character and distinction to the administration of the public lands—illustrates the special role of the Department of the Interior in that field. Cameron claimed a valid mineral discovery on public lands. His claim was rejected in administrative proceedings. Cameron, however, would not vacate the land

[2]The mining claimant's application to purchase was filed some six years after the railroad's map of definite location and when it was in possession.

and the United States sued to oust him. The Court said:

> "By general statutory provision the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. . . .
>
> * * * *
>
> "Of Course the land department has no power to strike down any claim arbitrarily but so long as the legal title remains in the Government it does have power after proper notice and upon adequate hearing to determine whether the claim is valid and if it be found invalid to declare it null and void." 252 U.S. 450, 459-460.
>
> "Due process in such case implies notice and a hearing. But this does not require that the hearing must be in the courts or forbid an inquiry and determination in the Land Department." *Orchard v. Alexander,* 157 U.S. 372, 383. If a patent has not issued, controversies over the claims "should be solved by appeal to the land department and not to the courts." *Brown v. Hitchcock,* 173 U.S. 473, 477. And see *Northern Pacific R. Co. v. McComas,* 250 U.S. 387, 392.

The term, "special tribunal," is one that has been used by the Supreme Court since earliest times to de-

scribe the functions of the Secretary in land matters. It was used long before the present-day concept of administrative law or administrative tribunals originated. It was used in the literal sense of "tribunal" as a court. It meant that, in this field, the Secretary was, and is, the federal court for land disposal, and his decisions are conclusive within the area of his jurisdiction. Along this same line of reasoning, the Court in the case of *Sun Oil Company v. Udall,* 230 F. Supp. 381 (D.C. D.C. 1964) stated, at page 382:

> The issue here is not whether this Court would have reached the same conclusions as did the Appeals Board, but rather, whether there is a 'rational basis for the conclusions reached' by the Board.

The courts may not entertain a suit, instituted against the Secretary by an unsuccessful applicant for public land, which questions the Secretary's disposition of that land on the ground it was based on an erroneous finding of fact (*Shepley v. Cowan,* 91 U.S. 330, 340 (1875); *Vance v. Burbank,* 101 U.S. 514, 519 (1879)), or upon an alleged misconstruction of statutes he must construe in disposing of the land (*Ness v. Fisher,* 223 U.S. 683, 691 *et seq.* (1912)), or upon an alleged misconstruction of a regulation which he has promulgated to implement such statutes. (*Chapman v. Sheridan-Wyoming Co.,* 338 U.S. 621, 630-631 (1950)) In short, the Secretary's decision is unassailable unless wrong beyond dispute. Time after time the Supreme Court has so held: *E.g., United States v. Seaman,* 17 How. 225, 230 (1854); *Gaines v. Thompson,* 7 Wall. 347 (1868); *Litchfield v. Register and Receiver,* 9 Wall. 575 (1869); *Marquez v. Frisbie,* 101 U.S. 473, 475 (1879); *Quinby v. Conlan,* 104 U.S. 420,

426 (1881); *Lee v. Johnson,* 116 U.S. 48, 49 (1885); *United States ex rel. Dunlap v. Black,* 128 U.S. 40, 48 (1888); *Bishop of Nesqually v. Gibbon,* 158 U.S. 155, 166 (1895); *DeCambra v. Rogers,* 189 U.S. 119, 122 (1903); *United States v. Chic. Mil. & St. P. Ry.,* 218 U.S. 233, 242 (1910); *Hall v. Payne,* 254 U.S. 343, 347-348 (1920). And see *Work v. Rives,* 267 U.S. 175, 183 *et seq.* (1925).

In *Riverside Oil Co. v. Hitchcock,* 190 U.S. 316 (1903), mandamus was sought to compel the Secretary of the Interior to change his decision that under the governing Act of Congress a forest reserve lieu-land selection must be accompanied by an affidavit that the land was nonmineral in character and unoccupied. In holding that a writ could not lie, the Court said (at pp. 324-325):

> Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions, to which is confided the execution of the laws which regulate the purchase, selling and care and disposition of the public lands.
>
> * * * *
>
> * * * Whether he decided right or wrong, is not the question. *Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by mandamus or injunction.* (Emphasis supplied)

This Court, in *Standard Oil Co. of California v. United States,* 107 F. 2d 402, 409, 410 (1939), cert.

den., 309 U.S. 654, recognized these same principles, stating as follows:

> The disposal of the public lands is not a subject over which the "judicial power" of the United States is extended. It is a field in which the authority of the Congress is supreme. *Lee vs. Johnson,* 116 U.S. 48, 6 S. Ct. 249, 29 L.Ed. 570; Art. IV, sec. 3, clause 2, of the Constitution, U.S.C.A.
>
> * * * *
>
> *If Congress has clothed the Secretary with general authority to administer the grant, and if his decision of fact in this instance was made within the scope of such authority, there can be no doubt that his decision is conclusive on the courts, in the absence, at any rate, of fraud or imposition.* The holdings to this effect are too numerous for citation, but among those apposite are *Catholic Bishop of Nesqually vs. Gibbon,* 158 U.S. 155, 15 S. Ct. 779, 39 L.Ed. 931; *Cameron vs. United States,* 252 U.S. 450, 40 S. Ct. 410, 64 L.Ed. 659; *St. Louis Smelting & Refining Co. v. Kemp,* 104 U.S. 636, 27 L.Ed. 875; *Wright v. Roseberry,* 121 U.S. 488, 7 S. Ct. 985, 30 L.Ed. 1039; *Burke v. Southern Pacific R. Co.,* 234 U.S. 669, 34 S. Ct. 907, 58, L.Ed. 1527; *Johnson v. Drew,* 171 U.S. 93, 99, 18 S. Ct., 800, 43 L.Ed. 88. (Emphasis supplied)

Other more recent cases on this issue are *Boesche v. Udall,* 373 U.S. 472, 476-477 (1963); *Best v. Humboldt Mining Co.,* 371 U.S. 334, 335-336 (1963); *Morgan v. Udall,* 306 F. 2d 799 (D.C. Cir. 1962), cert.

den. 371 U.S. 941 (1963). In the recent Supreme Court case of *Udall v. Tallman,* 380 U.S. 1 (1965) the Court stated, at page 16:

> The general rule is that the judicial power will not be interposed to limit or direct the exercise of discretion by public executive officers with respect to pending matters within their jurisdiction and control, except in clear cases of illegality of action.

In the case at bar, the Secretary of the Interior has made the factual determination of who was the first qualified applicant for an oil and gas lease. Furthermore, the Secretary's decision was based upon the sound legal and logical premise that to permit ". . . both the original offer and the new offer to subsist at the same time would be absurd." [R. 21].

The gravamen of appellants' argument appears to be that the mere fact that the Land Office gave Brandt and Shell erroneous advice entitled them, *ipso facto,* to have the lease issued to them. As the Secretary stated, "the land office cited no regulation or other authority for its view and we know of none" [R. 22]. Therefore, the Secretary had no alternative but to reverse the decision and order to lease issued to Hansen. Had he ruled otherwise, he clearly would have acted arbitrarily, unreasonably, and contrary to established law.

Conclusion.

For the above reasons, it is submitted that the Secretary's decision is reasonable and should be affirmed, and that the District Court's decision to grant a motion for Summary Judgment in favor of the appellees herein was proper.

Respectfully submitted,

GOODSTEIN & MOFFITT,
JOHN P. MOFFITT,
Attorneys for Appellee,
Raymond J. Hansen.